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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,107	03/03/2004	Michelle Grandy	20119-0003	4100
826 7590 04/15/2009 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER LE, TAN	
			ART UNIT 3632	PAPER NUMBER
			MAIL DATE 04/15/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/792,107

Applicant(s)

GRANDY, MICHELLE

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 7-11, 13, 14, 17, 18 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12, 15-16, 19-22, 27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 12, 15-16, 19-22 and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,377,941 to Har et al.

As to claim 1, Har et al. discloses a support frame for sink waste bags comprising a holder (26, 22, 50) (Fig. 1 for example) and a cover (32) attached to the holder wherein the cover is sized and positioned on the holder to conceal the storage unit (27) from being viewed in a first direction (top view direction).

As to claim 2, wherein the holder comprises a plate (50) for attaching to the surface (side wall, 36, 38); a ring piece (26) adapted to be attached to the plate that receives the storage unit (27) and holds the storage unit in place; and a first mounting piece (48, 46) (Fig. 1A, 1B) attached to the ring piece (by the hinge blocks 56, 58.).

As to claim 3, wherein any combination of the plate, the ring piece and the first mounting piece are detachable or capable of detaching.

AS to claims 4 and 16, wherein the cover (32) comprises a second mounting piece (68, 70) (See Fig. 1 D) connected to the first mounting piece (46, 48) (by hinge blocks 64, 66)

As to claim 5, wherein the second mounting piece is detachable or capable

of detaching from the first mounting piece.

As to claim 6, wherein the second mounting piece 68, 70 is detachable or capable of detaching from the cover 32.

As to claim 12, means (50, 52) for securing a storage unit to a surface; means (cover 32) for concealing.

As to claim 15, wherein the first direction is directed toward a front elevation (the examiner chooses the direction above the cover is a first direction).

As to claims 19-22, claims 19-22 recited limitations similar to those recite in claims 1 and 15 therefore also read on Har et al.

AS to claims 27-28, claims 27-28 are similar to those recited in claims 1 and 15, respectively, therefore also met by Har et al.

As to claims 29-30, a holder (26, 22, 50) that includes a first section (50) structured to attach to a wall (36, 38), a second section (26) structured to support a waste basket (27) above a floor adjacent to the wall; and a third section (blocks 64, 66) structured to connect to a concealing cover 32 at 68, 70; a cover 32 connected to the third section 64, 66 of the holder that includes at least one surface with dimensions equivalent to or greater than at least one surface of a wastebasket 27 supported by the holder and wherein the cover 32 is connected to the third section 64, 66 of the holder in an orientation that hides the at least one surface of the wastebasket from being seen from at least one

direction; wherein the at least one direction is directed toward a front elevation (direction at the elevation above the cover).

As to claim 31, further comprising a wastebasket (2) connected to the second section of the holder.

Claims 1-6, 12, 15-16, 19-22 and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,020,751 to Larkin.

As to claim 1, Larkin discloses a garbage bag and utility holder comprising a holder (14, 16, 18) (Fig. 1) and a cover (32) attached to the holder wherein the cover is sized and positioned on the holder to conceal the storage unit (27) from being viewed in a first direction.

As to claim 2, wherein the holder comprises a plate (60,) that attaches to the surface (side wall); a ring piece (14, 18) attached to the plate that receives the storage unit (50) and holds the storage unit in place; and a first mounting piece (42) (Fig. 1) attached to the ring piece.

As to claim 3, wherein any combination of the plate, the ring piece and the first mounting piece is detachable.

AS to claim 4, wherein the cover (32) comprises a second mounting piece (36) (see Fig. 1) connected to the first mounting piece (42) (connected to 18 where 18 connected to 42 is therefore connect to 42).

As to claim 5, wherein the second mounting piece is detachable from the first mounting piece.

As to claim 6, wherein the second mounting piece (40) (nut) is detachable from the cover.

As to claim 12, means (60, 42, 14) for securing a storage unit to a surface; means (cover 32) for concealing.

As to claim 15, wherein the first direction is directed toward a front elevation (the examiner chooses the direction above the cover is a first direction).

As to claim 16, further comprising a second mounting piece (36) structured to attach to the cover and the first mounting piece (42).

As to claims 19-22, claims 19-22 recited limitations similar to those recite in claims 1 and 15 therefore also read on Larkin.

AS to claims 27-28, claims 27-28 are similar to those recited in claims 1 and 15, therefore also read on Larkin.

As to claims 29-30, a holder (fig. 1) that includes a first section (60) structured to attach to a wall (58), a second section (14, 18, 42) structured to support a waste basket (50) above a floor adjacent to the wall; and a third section (36) structured to connect to a concealing cover 32; and a cover 32 connected to the third section of the holder that includes at least one surface with dimensions equivalent to or greater than at least one surface of a wastebasket 50 supported by the holder and wherein the cover 32 is connected to the third section of the holder in an orientation that hides the at least one surface

of the wastebasket from being seen from at least one direction; wherein the at least one direction is directed toward a front elevation (direction at the elevation above the cover).

As to claim 31, further comprising a wastebasket (2) connected to the second section (14, 18, 42) of the holder.

Response to Arguments

Applicant's arguments filed 12/3/108 have been fully considered but they are not deemed to be persuasive

Applicant has clarified that " the surface" as recited in claim 2 is not positively recited not part of the claims, only functional recited is acknowledged. However in claims 2: "a plate that **attaches** to the surface", the surface in this case still indicates positively recited. The following suggestion to put the surface language as an intended -functional: --- a plate that is adapted to attach to the surface -- or -- a plate for attaching to the surface --.

Arguments with 102(b) rejection in view of Har.

In response to Applicant's arguments on pages 10-14, that Har does not disclose each and every element recited in these claims (1-6, 12, 15-16, 19-22 and 27-31) and therefore does not anticipate these claims. This argument is not persuaded by examiner. The examiner submits that Har teaches all of the limitations as recited in claims 1-6, 12, 15-16, 19-22 and 27-31 including intended functions recited as pointed out in the action.

With respect to the art rejections of record, it should be noted that the claims are directed solely to the apparatus/device. Patentability of product is based on the structure thereof and not how it is intended to be used. Further, a prior art structure need only be "capable" of performing the recited intended functions and need only "read on" the recitations of the claim. In the instant case, Har's structures are clearly capable of performing the recited intended functions and need only "read on" the recitations of the claims. Currently, the "device" as claimed "read on" Har and thus is not patentable.

It should also be noted, an apparatus is supposed to be defined by what it is and not by how it supposes to function.

With respect to Applicant's arguments of claim 19 that Har does not teach or suggest that alleged cover conceals **in whole** the storage unit. As pointed out in the action and as stated in the arguments above. Claim 19 "read-on" and thus met by Har. Note that the "first direction" depends on viewer's location only. Applicant argues that **the first direction is directed toward a front elevation**. This argument is also not found persuasive because there is nothing in the disclosure/claim to indicate which direction is the first direction, or at least define in the claim **the first direction is directed toward a front elevation** thus Applicant has failed to particular point out and distinctly claim.

Arguments with 102(b) rejection in view of Larkin

Applicant's arguments on pages 15-21 with respect to the rejection of claims 1-6, 12, 15-16, 19-22 and 27-31 as being anticipated by Larkin appear to be similar to the

Har's argument as mentioned above. Therefore the examiner's response is going to be the same. Examiner respectfully submits that Larkin teaches all of the limitations as recited in claims 1-6, 12, 15-16, 19-22 and 27-31 including intended functions recited as pointed out in the action. With respect to the art rejections of record, it should be noted that the claims are directed solely to the apparatus/device. Patentability of product is based on the structure thereof and not how it is intended to be used. Further, a prior art structure need only be "capable" of performing the recited intended functions and need only "read on" the recitations of the claim. In the instant case, Larkin's structures are clearly capable of performing the recited intended functions and need only "read on" the recitations of the claims. Currently, the "apparatus" as claimed "read on" Larkin and thus is not patentable.

In Summary:

Applicant's arguments do not comply with 37 CFR 1.111© because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Further, it appears that all of applicant's arguments are directed toward the intended functions instead of how the claims structurally distinguish the invention from the prior art. What specific structure is applicant relying on for patentability?

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen J. Shriver can be reached on (571) 272-6689. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tan Le
Examiner
Art Unit 3632

/J. ALLEN SHRIVER II/
Supervisory Patent Examiner, Art Unit 3632